

**United States Department of Labor
Employees' Compensation Appeals Board**

R.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cayey, PR, Employer**

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**Docket No. 16-0444
Issued: April 13, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 11, 2016 appellant filed a timely appeal of an October 29, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish an occupational disease due to factors of his federal employment.

FACTUAL HISTORY

On August 13, 2014 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bicipital tendinitis and tenosynovitis as

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant submitted additional evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

well as partial articular surface tearing of the anterior supraspinatus tendon due to repetitive movement above his shoulder and utilizing the steering wheel of his employing establishment vehicle for at least five hours a day. He first became aware of his condition on December 20, 2013. Appellant stopped work on June 30, 2014.

Dr. Juan Echeandia, a general practitioner, examined appellant on August 7, 2014 due to severe pain in the right shoulder. He noted that appellant began to develop shoulder pain in December 2013. Dr. Echeandia indicated that appellant's repetitive movement of the shoulder while casing mail and turning the wheel on his postal vehicle worsened his shoulder pain. Appellant underwent a shoulder magnetic resonance imaging (MRI) scan and shoulder surgery on July 16, 2014. The December 20, 2013 MRI scan demonstrated a previous rotator cuff surgical repair, diffuse thickening of the supraspinatus tendon, diffuse thickening of the biceps tendon consistent with tenosynovitis, and mild tendinosis of the subscapularis tendon as well as inflammatory osteoarthritis of the acromioclavicular joint.

Dr. Echeandia reviewed appellant's June 3, 2014 right shoulder ultrasound and found subscapularis tendinosis without tearing, biceps tenosynovitis, and significant supraspinatus tendinosis with partial articular surface tearing.

In a letter dated September 9, 2014, OWCP requested that appellant provide additional factual and medical evidence in support of his claim. Appellant explained in a narrative statement on September 10, 2014 and noted that his right shoulder symptoms caused him to initially seek medical treatment in December 2013. He attributed his right shoulder pain to constant repetitive movement including casing mail and turning the wheels on his postal vehicle. In April 2014 appellant sought medical treatment from Dr. Luis A. Miranda Torres, a Board-certified orthopedic surgeon, underwent an MRI scan and shoulder surgery on July 16, 2014.

By decision dated November 18, 2014, OWCP denied appellant's occupational disease claim as he had failed to provide the necessary medical opinion evidence to establish that his diagnosed right shoulder conditions were caused or contributed to by his identified employment duties.

Appellant requested an oral hearing from OWCP's Branch of Hearings and Review on December 1, 2014. He submitted additional medical evidence. Dr. Miranda Torres completed a report on September 25, 2014 and noted treating appellant since April 2007. Appellant had reported right shoulder pain at that time and Dr. Miranda Torres had performed right shoulder decompression and debridement on June 7, 2007. Appellant improved but sought additional treatment on December 18, 2008 due to acromial joint inflammation. He continued to work and performed his normal activities. In May 2013 appellant underwent left knee surgery due to a meniscal tear.

At the oral hearing on August 11, 2015 appellant testified that he had worked as a city carrier at the employing establishment for 25 years. He described his employment duties of casing mail, including reaching above his shoulder, shifting gears in his postal vehicle, turning the wheel, raising and lowering the window, and pulling the hand break. Appellant further noted that he had delivered mail to 1900 boxes, but opened and closed 800. He noted that he had a mounted route, delivering mail from his vehicle. Appellant returned to work in August 2014 following his shoulder surgery.

Following the oral hearing, Dr. Miranda Torres, in a note dated May 5, 2015, found that every time appellant was engaged in repetitive motion his pain returned. Appellant also submitted additional documents which were written in Spanish, including a note from Dr. Manual Fernandez Figueroa, a general practitioner.

In an August 20, 2015 note, Dr. Miranda Torres opined that appellant's condition was due to his job.

By decision dated October 29, 2015, the OWCP hearing representative found that appellant had not submitted the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his accepted employment duties. She acknowledged that appellant's work duties consisted of casing and delivering mail, opening and closing vehicle doors, lowering and raising the window of his vehicle, shifting gears, turning the steering wheel, and pulling on the hand brake. The hearing representative also found medical evidence establishing that appellant sustained bicipital tendinosis, partial articular surface tear of the anterior supraspinatus tendon, right shoulder impingement syndrome and osteoarthritis of the acromioclavicular joint. However, she found the record failed to reflect the necessary medical reasoning to explain how and why appellant's work activities would have caused or contributed to his diagnosed conditions.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS

The Board finds that this case is not in posture for a decision.

OWCP's hearing representative accepted that appellant's work duties consisted of casing and delivering mail, opening and closing vehicle doors, lowering and raising the window of his vehicle, shifting gears, turning the steering wheel, and pulling on the hand brake. She also accepted that appellant had medical evidence of a diagnosed condition including bicipital tendinosis, partial articular surface tear of the anterior supraspinatus tendon, right shoulder impingement syndrome, and osteoarthritis of the acromioclavicular joint. OWCP denied appellant's claim as the medical evidence of record failed to establish a causal relationship

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

between his diagnosed conditions and his implicated employment duties. The case record, however, does not contain a translation of the note in Spanish from Dr. Figueroa. The Board has held that it is unreasonable for OWCP to deny a claim before it attempts to secure an accurate translation of relevant medical evidence.⁴ For OWCP and the Board to properly consider all medical evidence of record, an accurate translation of the any medical records in Spanish is needed. Therefore, the case will be remanded for this purpose and, after conducting such further development as it may find necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision as OWCP failed to obtain translation of the Spanish portions of appellant's medical records.

ORDER

IT IS HEREBY ORDERED THAT October 29, 2015 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: April 13, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁴ *Ana D. Pizarro*, 54 ECAB 430 (2003) (finding that appellant submitted medical evidence in Spanish, that OWCP had not analyzed or sought a translation of this medical evidence. The Board remanded the case for this purpose); *Armando Colon*, 41 ECAB 563 (1990) (OWCP abused its discretion in denying an employee's request for reconsideration as the medical evidence submitted lacked probative value because it was in a foreign language); *see also H.S.*, Docket No. 11-1170 (issued December 14, 2011); *M.T.*, Docket No. 09-208 (issued November 9, 2009); *A.G.*, Docket No. 08-206 (issued May 12, 2008), and *R.R.*, Docket No. 13-1405 (issued October 21, 2013).